IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2478 OF 2004.

Mansinh B. Kapadia. ... Petitioner.

V/s.

State of Maharashtra & Anr. ... Respondents.

Ms Bharti L. Mahant i/b Pandya Gandhi & Co., for petitioner.

Mr.S.R.Shinde, APP for State.

Mr.D.M.Galani, advocate for Respondent No.2.

CORAM : V.M.KANADE,J
DATE : MARCH 18,2005.

P.C. :

1. Heard the learned counsel appearing on behalf of the petitioner and respondent.

2. The petitioner is challenging an order of issuance of process against the petitioner passed by the Metropolitan Magistrate, 20th Court, Mazgaon Mumbai in the case No.1271/S/93. It is submitted by the learned counsel for the petitioner that the petitioner resigned from the company on 24th December, 1997 and intimation was given to the Registrar of Company on 28th January, 1998. The cheques on the basis of which the complaint was filed were issued on 28th March, 1998 and 28th June, 1998. The intimation

about the dishonour was received on 31st July, 1998 by the complainant and thereafter, complaint was filed. The learned counsel for the petitioner has annexed Xerox copy of the certified copy of the Form-32 issued by the Registrar of Companies. It is submitted that the petitioner was not concerned with the conduct of business of the company on the date on which cheques were issued and therefore, he was not incharge and responsible for affairs of the companies during the relevant period. It was further submitted that this is a fit case where the process issued was liable to be quashed. It was also submitted that in other complaint between the same parties namely Case No.1668/S/1998, the complainant had made an application for deleting name of the present petitioner in that complaint which was granted by the learned Metropolitan Magistrate. Therefore, it was submitted that this is an additional fact which indicates that the petitioner was not director at the relevant period.

3. The learned counsel for the respondent has invited my attention to the affidavit in reply filed by the respondent. It is submitted that they are seriously disputing the fact regarding resignation of the present petitioner. It is submitted that the

petitioner was a Chartered Accountant and post-dated cheques were issued for repayment of the loan which was given to the company. It was on his advice that the cheques were dishonoured. It is submitted that in other complaint, an application was made for deleting the name of the present petitioner and few other directors, since various applications were being made to protract the litigation, the names were deleted. It is submitted that after the names of the four other directors were deleted, remaining accused left India and are absconding at the moment. This fact is seriously denied by the learned counsel for the petitioner.

4. I have perused the certified copy tendered by the petitioner. Prima facie, it shows the date of resignation as 24/12/1997. However, this fact is seriously disputed by the respondent and certain material is placed to indicate that the petitioner is still acting as a Director. The respondent has referred to Writ Petition which was filed on behalf of the present petitioner in the High court wherein he was shown as a Director to the said petition. It is no doubt that this fact is also seriously disputed by the learned counsel for the petitioner. Be that as it may be, point is that the fact of resignation is

seriously disputed by the respondents. It appears prima facie that there is some material for disputing the said fact. In my view, therefore, it will not be possible to decide whether the petitioner was in fact in charge of affairs of the company on that date or had resigned. The presumption which is raised under section 77 of the Evidence Act as also under the Companies Act is rebuttable presumption and therefore, both the parties will have to lead evidence to prove this fact. The Writ Petition is therefore rejected. It is however, clarified that all questions raised in this petition are kept open and the Trial Court shall decide this issue alongwith the other issues on the basis of the evidence led by the parties. Hearing of the trial court case is expedited.

. Parties to act on the authenticated copy of this Order.

(V.M.KANADE,J)